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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 454.

JAY B. PHELPS,

Appellant,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK and STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY.

No. 455.

LUCY ASKAM, *et al.*,

Appellants,

vs.

BOARD OF EDUCATION OF THE TOWN OF WEST NEW YORK and STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY.

BRIEF FOR APPELLANTS.

WARD J. HERBERT,
ROBERT H. MCCARTER,
Counsel for Appellants.

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APPEALS FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

BRIEF FOR APPELLANTS.

I.

Opinions of the Courts below.

The New Jersey Supreme Court handed down a single opinion applicable to both cases. It is reported in 115 N. J. L. 310 (R. 24). No additional opinion was written by

The New Jersey Court of Errors and Appeals, the judgments being affirmed by memorandum. The memorandum of affirmance in *Phelps* v. *Board of Education of the Town of West New York, et al.* (No. 454), is reported in 116 N. J. L. 412 (R. 31). The similar memorandum in *Askam, et al.* v. *Board of Education of the Town of West New York, et al.* (No. 455), is reported in 116 N. J. L. 416 (R. 72).

II.

Statement of the case.

All of the appellants are teachers or principals in the public schools of West New York, New Jersey. They challenge here, as they have below, the constitutionality of Chapter 12 of the New Jersey Laws of 1933 (P. L. 1933, page 24) by which the legislature undertook to authorize boards of education throughout the State to reduce the salaries of their employees during the period beginning July 1, 1933 and ending July 1, 1934, and under which legislation the Board of Education of The Town of West New York reduced the salaries of the appellants.

On February 4, 1933, when Chapter 12 of the New Jersey Laws of 1933, *supra*, was approved, the appellants had all been employed for more than three consecutive years in the public schools of West New York. (Tables, R. pp. 7-16, giving dates of employment and approximate years of service of all faculty members, including the appellants.) As a result of such length of employment, Chapter 243 of the New Jersey Laws of 1909 (P. L. 1909, p. 398; 4 N. J. Comp. Stat., pp. 4763, 4764, Secs. 106a, 106b, 106c) had become applicable to the relationship between each of the

appellants and the West New York Board of Education. That statute, which is at the foundation of the argument to be made, reads in part as follows:

> "The service of all teachers, principals, supervising principals of the public schools in any school district of this State shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive years in that district, unless a shorter period is fixed by the employing board; * * * No principal or teacher shall be dismissed or subjected to reduction of salary in said school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause, and after a written charge of the cause or causes shall have been preferred against him or her, signed by the person or persons making the same, and filed with the secretary or clerk of the Board of Education having charge of the school in which the service is being rendered, and after the charge shall have been examined into and found true in fact by said Board of Education, upon reasonable notice to the person charged, who may be represented by counsel at the hearing."

The full text of the statute is given in Appendix A.

It is conceded that none of the appellants have been guilty of any of the offenses made a basis for salary reduction by the 1909 act, *supra;* namely, inefficiency, incapacity, conduct unbecoming a teacher or other just cause (R. 18 and 54).

On February 4, 1933, at a time when the West New York Board of Education was without real or apparent power to reduce the salaries of the appellants, except for the reasons provided in Chapter 243 of the Laws of 1909, *supra,*

the Governor of New Jersey approved Chapter 12 of the Laws of 1933, *supra*. That statute purports to authorize boards of education to reduce salaries for the period between July 1, 1933 and July 1, 1934. The preamble recites that "due to present economic conditions, an emergency exists" and the body of the statute reads in part as follows:

> "The board of education of every school district in this State shall have full authority, by resolution, to fix and determine the salaries and compensation to be paid to officers and employees of and persons holding positions in any such school district, between the first day of July, one thousand nine hundred and thirty three, and the first day of July, one thousand nine hundred and thirty four, notwithstanding any such person be under tenure or not."

For the entire statute and preamble see Appendix B.

In reliance upon the statute just referred to, the West New York Board of Education, on June 23, 1933, adopted resolutions reducing the salaries of its employees, including the appellants, during the period between July 1, 1933 and July 1, 1934. For the text of the resolutions see R. 18, par. 3, and R. 19, par. 5. That they were adopted in reliance upon Chapter 12 of the Laws of 1933, *supra*, is conceded. (R. 3, par. 5, admitted by R. 6, par. 4; and R. 50, par. 45, admitted by R. 52, par. 5.)

At this point the difference between the two cases may be noted. When offered salary at the reduced rate, Mr. Phelps, who is the sole appellant in Number 454, refused to accept it and the stipulation of facts includes a statement that he has not agreed, expressly or impliedly, to the reduction of his salary for the period in question (R. 20).

None of the appellants in the other case (No. 455) has agreed expressly to the reduction in salary but, with one exception, they have cashed pay checks issued to them by the Board of Education (R. 61). Except for this difference in the degree of protest made, (which is immaterial, we contend) the cases are identical in their general outlines.

The situation of Mr. Phelps (appellant in No. 454) is typical. By contract dated May 4, 1921 he was employed to teach in the public schools of West New York for the period of a year. That contract was renewed, with salary increases, in the two following years. It was likewise renewed at the beginning of the fourth year, that renewal being within the scope of Chapter 243 of the Laws of 1909, *supra*. From that time until the adoption of Chapter 12 of the Laws of 1933, *supra*, which was followed by the action reducing salaries, Mr. Phelps' contract of employment continued in full force and effect with no changes except certain salary increases granted to him by his employer, the West New York Board of Education. These facts are set forth in the petition of appeal addressed to the New Jersey Commissioner of Education (R. 2, *et seq.*) and admitted by the answer thereto (R. 5 and 6); also in the stipulation of facts (R. 18).

The appellants in the Askam case (No. 455) are in a similar position, as shown by the petition of appeal addressed to the New Jersey Commissioner of Education (R. 37, *et seq.*), the answer thereto (R. 52) and the stipulations of fact (R. 53 and R. 6). This generalization is subject to the minor exception however that the West New York Board of Education contends that two of the large group of appellants, although having been engaged

in classroom teaching at various times and being qualified to do such teaching, were assigned to clerical positions and so, in 1933, were not within the scope of Chapter 243 of the Laws of 1909, *supra* (R. 57, par. 6; R. 59, par. 7).

The cases were first presented to the Commissioner of Education of New Jersey and then to the State Board of Education. This was done pursuant to the School Law. 4 N. J. Comp. Stat., p. 4727, Sec. 10. Both the Commissioner and the State Board refused to pass upon the constitutionality of Chapter 12 of the Laws of 1933, *supra* (R. 21, 22, 62, 66 for the decisions). The cases were then taken to the New Jersey Supreme Court by writs of certiorari, the State Board of Education becoming a nominal party defendant (R. 1 and 36). The New Jersey Supreme Court held the statute constitutional, and upon that result being affirmed by the Court of Errors and Appeals, the present appeals were taken.

III.

Specification of errors.

(R. 78-81)

Point I. Chapter 12 of the New Jersey Laws of 1933 (P. L. 1933, page 24), approved February 4, 1933, is unconstitutional and void as repugnant to Article 1, Section 10, of the Constitution of the United States, in that it impairs the obligations of existing contracts of the appellants.

Point II. The aforesaid Statute of the State of New Jersey is unconstitutional and void as repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the

United States, in that it deprives the appellants of their property without due process of law.

Point III. The said Statute of the State of New Jersey is unconstitutional and repugnant to Section 1 of the Fourteenth Amendment of the Constitution of the United States in that it denies the appellants the equal protection of the laws.

Point IV. The New Jersey Court of Errors and Appeals erred in deciding in favor of the validity of the aforesaid Statute of the State of New Jersey.

IV.

Argument.

A. Chapter 243 of the New Jersey Laws of 1909 entered into and became a part of the employment contracts of the appellants.

The New Jersey courts rejected this proposition. The State Supreme Court said (R. 27; 115 N. J. L. at 313):

> "The act of 1909 * * * provides, among other things, that no teacher shall be dismissed or subjected to reduction of salary except for certain causes after charges and a trial. That established a legislative status for teachers, but we fail to see that it established a contractual one that the legislature may not modify. If the argument now made is sound, the act of 1909 is irrepealable as to any teacher holding his position by tenure at any time thereafter. * * * The status of tenure teachers, while in one sense perhaps contractual, is in essence dependent on a statute, like that of the incumbent of a

> statutory office, which the legislature at will may abolish, or whose emoluments it may change."

That is the essence of the opinion below. The error lies in this: the employment of teachers, both before and after becoming subject to a statute like Chapter 243 of the New Jersey Laws of 1909, is contractual; they do not occupy public offices which may be abolished or for which the compensation may be reduced as the legislature sees fit. It is not necessary to go out of New Jersey for authority. In *Gowdy* v. *State Board of Education*, 84 N. J. L. 231 (1913), a teacher, who had been employed in the Paterson public schools for more than three consecutive years, contended that a resolution of the Paterson Board of Education providing for the payment of salaries in twelve, rather than ten, annual installments, would amount to a reduction in her compensation and so be illegal under Chapter 243 of the Laws of 1909; 4 N. J. Comp. St., p. 4763, Sec. 106a. In sustaining the teacher's contention the New Jersey Supreme Court referred several times to her "contract" and summed up its conclusion, at page 233, in the following sentence:

> "We think that such a result is in effect an impairment of the contract and in clear violation of section 106a."

The Court of Errors and Appeals affirmed this decision on the opinion of the Supreme Court. 85 N. J. L. 726.

Allen v. *Board of Education*, 81 N. J. L. 135, and *Ball* v. *Trustees*, 71 N. J. L. 64 (cases to be discussed more in detail later), hold that teachers have contractual rights in pension plans provided for by statute.

That a teacher is a contractual employee, not a public officer, was held in *Mootz* v. *Belyea*, 60 N. D. 741 (also re-

ported and annotated in 75 A. L. R. 1347). There the court said, at page 744,

> "When a teacher is employed by a school district she is not employed as an officer and she does not become an officer. Her rights are measured by the terms of her contract. As said in *Board of Education* v. *State*, 100 Wis. 455, 76 N. W. 351, the teacher 'was a mere employee, and not an officer of the district in question, and had no official relations to it. His services were to be rendered in consideration of a certain stipulated compensation and he was not an officer, within the meaning of the constitution and laws.'
>
> The relationship between the teacher and school directors is purely contractual. *Clune* v. *School District*, 166 Wis. 452, 166 N. W. 11, 6 A. L. R. 736; *State ex rel. O'Neil* v. *Blied*, 188 Wis. 442, 206 N. W. 213.
>
> *Heath* v. *Johnson*, 36 W. Va. 782, 15 S. E. 980, says: 'The occupation of a teacher of a free school in this State is not a public office, but an employment.'
>
> In *State ex rel. Lewellen* v. *Smith*, 49 Neb. 775, 69 N. W. 114, it is said: 'A contract to teach in one of the free schools of the ordinary districts is one of employment. The district, represented by the board, is an employer, and the teacher an employee. The teacher in such schools is not a public officer.' "

The annotation in 75 A. L. R. 1347, 1352 (*supra*) is to the same effect.

No statute was involved in *Mootz* v. *Belyea, supra*, but the same result has been reached where teachers' employments have been controlled by statutes similar to Chapter 243 of the New Jersey Laws of 1909 (Appendix A). *Steinson* v. *Board of Education of New York City*, 165 N. Y.

431 (1901), was a suit by a dismissed teacher for salary allegedly due him during the six year period preceding the commencement of his action. He had been dismissed on March 12, 1890 and commenced suit July 15, 1896. On appeal to the State Superintendent of Schools it had been held that the plaintiff could be removed as a teacher only after trial with notice, "in accordance with the provisions of the Consolidation Act". In this situation the Court of Appeals held that the plaintiff was entitled to a judgment for salary. Judge Landon said for the Court (pp. 434, 435),

> "The plaintiff was not an officer, but an employe. His employment was contractual, and his proper remedy is by action. * * * The plaintiff's employment was subject to no other limit of time than the power of removal for cause vested in the defendant and its officers, and the power of the state superintendent to revoke his state license. The plaintiff was discharged without right or cause, and is entitled to recover."

To the same effect see *Martin* v. *Fisher*, 108 Cal. App. 34; *School City of Elwood* v. *State*, 203 Ind. 626; *Kostanzer* v. *State*, 205 Ind. 536; *State* v. *Board of Milwaukee*, 190 Wis. 570.

In *Martin* v. *Fisher*, *supra*, the California court said, at page 39,

> "Respondent must find her authority for a judgment in the right given her by section 1609 of the Political Code to continue her duties as a permanent teacher in the schools of the district. This right finds its origin in a contract between herself and the board of trustees of the district, together with two years satisfactory service as a teacher under the terms of her contract or contracts. Therefore the cause of action finds its source, first, in a contract,

> second, in services satisfactorily performed under the terms of the contract, and, third, in the provisions of the law.
>
> Originally the relation of the district and respondent was that of employer and employee. The provisions of section 1609 of the Political Code merely served to extend the term of the contract of employment by operation of law and did not change the relation of the employer and employee. In reality the suit of respondent is to collect her salary under a contract, the terms of which had been extended by operation of law.
>
> The position of a teacher in the public schools of California is not an office. It is an employment by contract made between the teacher and the district."

The contractual nature of the relationship between the appellants and their employer, the Board of Education of West New York, is demonstrated by the language of the New Jersey School Law (4 N. J. Comp. St. 4724). Article IV., Sec. VII., Parg. 6, of the New Jersey Constitution, reads in part:

> "The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this state between the ages of five and eighteen years."

Pursuant to that constitutional provision there was adopted "An Act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof". (P. L. 1903 [2d Sp. Sess.] p. 5; 4 N. J. Comp. St. 4724). Section 106 of the act provides for the "employment" of teachers and makes repeated ref-

erence to the "contract" of employment. The full text of the section is set out in Appendix C.

After the appellants had each completed the required period of probationary service on an annual basis, the West New York Board of Education had the choice of terminating their contracts of employment or of continuing them in its employ, thereby giving up its right to reduce their salaries at any time in the future. The Board of Education, in this situation, chose to continue the appellants as its employees. Similarly, each of the appellants, at the end of the required period of probationary service, had the choice between seeking other employment or continuing as employees of the West New York Board of Education on the permanent basis provided by the statute. They also chose to remain members of the faculty of the West New York public schools.

Laws in force at the time and place of the making of a contract enter into and form a part of it. *Northern Pacific Ry.* v. *Wall*, 241 U. S. 87, 91; *Fisk* v. *Jefferson Police Jury*, 116 U. S. 131; *Coombes* v. *Getz*, 285 U. S. 434; *Home B. & L. Assn.* v. *Blaisdell*, 290 U. S. 398, 429 *et seq.*; *Vanderbilt* v. *Brunton Piano Co.*, 111 N. J. L. 596, 597.

In *Ball* v. *Trustees*, 71 N. J. L. 64, (*supra*), Swayze, J., 1904, the State Supreme Court had before it a teacher's claim to pension benefits. An act of 1896 gave annuities to teachers incapacitated after 20 years of service. In 1899 the statute was amended to make the annuity depend upon approval by the board of trustees of the retirement fund. The opinion of the court states the problem and the solution as follows, pages 65 and 66:

> "The question for solution, therefore, is whether the rights of the plaintiff acquired by her under the

act of 1896 can be taken away by subsequent legislation.

The legal relation between the plaintiff and the defendant is that of contract. By electing to accept the provisions of the act of 1896, and making or tendering the necessary payment, the plaintiff, when incapacitated, became entitled to the annuity, which, although not a personal obligation of the board of trustees, was payable to her out of the fund. The terms of the agreement are to be ascertained by reference to the statute. When this agreement was once made, it could not be altered without the consent of both parties thereto and upon sufficient consideration. The fact that the terms of the agreement were embodied in an act of the legislature does not change its essential character as a contract, and it was beyond the power of the legislature to impair the obligation of this contract by subsequent legislation.

* * * * * *

"What the act of 1899 attempted to do was to impair the obligation of an existing contract, and this is beyond the power of the legislature."

The *Ball* case was followed in *Allen* v. *Board of Education*, 81 N. J. L. 135 (*supra*), Voorhees, J., Sup. Ct., 1911. There a teacher brought suit for the portion of her salary which had been deducted by the defendant in reliance upon the pension fund provisions of the School Law (P. L. 1907, p. 365). The court upheld the right of the defendant to deduct a portion of the plaintiff's salary for the pension fund, saying at page 137, *et seq.*:

"By the amendatory act of 1907 (Pamph. L., p. 374, Sec. 221, Parg. 4) a new section was enacted, reading as follows:

'Every person who shall be appointed to any position hereinafter designated, on or after the

first day of January, one thousand nine hundred and eight, shall become a member of the fund by virtue of such appointment.'

"This statute was in force when the contract between the plaintiff and defendant was entered into and it formed a part of such contract and was one of the terms of employment of the plaintiff. *The creation of this fund was an important public measure which may well be considered as tending to make the system of free schools established by the act both thorough and effective by rendering the position of teacher a more desirable one because of the advantages arising out of the fund. It was a public scheme designed for the betterment of a branch of the service.* It was offered to persons seeking and desirous of becoming teachers, who were at liberty at their option to accept such positions subject to the terms of the statute, or to refuse them. If they did accept, then the provisions of the act became, by such acceptance, binding upon them.

"We conclude, therefore, that the act, aside from any constitutional invalidity, became a part of the contract entered into between the parties to this suit * * *."

The sentences which we have italicized express a thought which applies with even greater force to Chapter 243 of the New Jersey Laws of 1909. That Chapter made it possible for our boards of education to offer their good teachers, tested by three years of probationary service, assurance against dismissal or reduction in salary except for good cause. Thousands of teachers—the appellants included—have been offered and have accepted employment on those terms. Chapter 243 of the New Jersey Laws of 1909 became just as much a part of their contracts as the teachers' pension act.

Employment contracts between governmental units and individuals are within the protection of the United States Constitution. *Hall* v. *Wisconsin,* 103 U. S. 5. There Mr. Hall was employed by written contract to make a geological, mineralogical and agricultural survey of the state. The statute providing for the survey fixed a maximum rate of compensation. Before the completion of the contract the statute was repealed. Held, that the contract was enforceable in spite of the repealing of the statute. The Supreme Court of California has ruled that a teacher who has earned permanent employment under the California statute obtains vested rights which remain unaffected by the repeal of the law under which the permanent employment came into existence. *Klein* v. *Board of Education,* 1 Calif. (2d) 706, 708. Wisconsin holds that the pension rights of teachers established by statute are contractual and cannot be impaired by later legislation. *State* v. *Blied,* 188 Wis. 442. That decision was approved and applied in a case involving a teacher's right to permanent employment: *State* v. *Board of School Directors of Milwaukee,* 190 Wis. 570, 575 (*supra*). There the court said,

> "It is sufficient for the disposition of this case to hold that, when the relator had performed continuous service as a teacher from September, 1921, until and including the end of the school year on June 19, 1925, there having been no unfavorable action by committee or board, she became, by virtue of such service and said statute, permanently employed, and her status as such, with the substantial rights belonging thereto, became fixed, and could only be abrogated or disturbed in the method prescribed in said statute. That the status of one permanently employed as a teacher under such a system and with the rights so fixed cannot be impaired by sub-

> sequent legislation, as held in *State* v. *Blied,* 188 Wis. 442, 206 N. W. 213, manifestly requires a holding that such status or contract right cannot be destroyed or impaired by the school board, which is but the administrative arm of the state for carrying on the governmental function of education, except and unless such administrative body has the express power given it by statute to effect such changes."

In *Fisk* v. *Jefferson Police Jury,* 116 U. S. 131 (*supra*), a district attorney who had served his allotted term obtained judgments for the salary and fees due to him from the parish. Subsequent to the end of the term of office the State Constitution had been revised to provide for a lowered maximum rate of taxation. Under the previous law it would have been proper for the police jury, the governing body of the parish, to assess sufficient taxes to provide for the payment of the judgments. Under the revised Constitution the limit of taxation had already been reached. It was held that, the term of office having been completed and the services rendered, a completed contract had come into existence, perfect in its obligation and resting on the remedies which the law at that time gave for its enforcement, and that the obligation of the contract was impaired by the revised state constitution.

Holders of municipal bonds are likewise assured, by the contract clause, that the taxing provisions in existence at the time of the issuance of the bonds will remain in force as to their essential parts. *Worthen Co.* v. *Kavanaugh,* 295 U. S. 56; *Hubert* v. *New Orleans,* 215 U. S. 170. In the Worthen case, Mr. Justice Cardozo said for the Court, at page 60, concerning the statutory amendments in question:

> "With studied indifference to the interests of the mortgagee or to his appropriate protection they have

taken from the mortgage the quality of an acceptable investment for a rational investor''.

In the cases at bar, Chapter 12 of the New Jersey Laws of 1933 has taken from teachers, many of whom have invested the better part of their lives in the service of the various school districts of the state, a most important feature of the investment made.

The New Jersey Supreme Court, in the opinion below (R. 28; 115 N. J. L. at 314), cites only one case. It is *Vroom* v. *Board of Education*, 79 N. J. L. 46. There a teacher claimed that, when he had been employed 36 years before, it had been agreed between him and the board of education that he should hold his position during good conduct and efficiency. A justice of the State Supreme Court, sitting alone, held that such a contract, if made, was beyond the statutory authority of the defendant board. The case arose before the passage of Chapter 243 of the Laws of 1909, *supra*, and we submit that it has no application to the present situation.

B. The appellants' contracts of employment are not subject to any reserved power of the state to authorize the reduction of salaries.

Granting that Chapter 243 of the New Jersey Laws of 1909 (Appendix A), entered into and became a part of the appellants' contracts, it may be contended that such contracts are subject to a reserved power to authorize salary reductions. The statute itself expressly reserves the power to reduce salaries for the causes and in the manner there stated. There is also an express reservation of the power

to dismiss teachers for certain causes, including the falling off of enrollment. These express reservations amply protect the State in performing its obligation to furnish a thorough and efficient system of public schools.

There is no precedent for implying a reservation of power to authorize such reduction of salaries. That the action taken may be for the public welfare is not a sufficient basis for implying such a reservation. *W. B. Worthen Co.* v. *Thomas,* 292 U. S. 426. There, in commenting upon *Home B. & L. Assn.* v. *Blaisdell,* 290 U. S. 398, Mr. Chief Justice Hughes said for this Court, at page 433:

> "But we also held that this essential reserved power of the State must be construed in harmony with the fair intent of the constitutional limitation, and that this principle precluded a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them. We held that when the exercise of the reserved power of the State, in order to meet public need because of a pressing public disaster, relates to the enforcement of existing contracts, that action must be limited by reasonable conditions appropriate to the emergency. This is but the application of the familiar principle that the relief afforded must have reasonable relation to the legitimate end to which the State is entitled to direct its legislation."

If the West New York Board of Education had contracted for a supply of coal over a stated period, could the New Jersey legislature have validly authorized a reduction in the contract price without the consent of the other party? The answer obviously must be negative. Yet it might well be urged in defense of such action that it was

for the public welfare, resulting in economy in school administration.

The preamble to Chapter 12 of the New Jersey Laws of 1933 (Appendix B) recites that,

> "Due to present economic conditions, an emergency exists which requires that the board of education of every school district * * * be enabled to fix and determine, by resolution, the amount of salary or compensation, to be paid to officers and employees * * *."

The statute itself limits the authority conferred to the period between July 1, 1933 and July 1, 1934, one year.

In *Home B. & L. Assn.* v. *Blaisdell* (*supra*), 290 U. S. 398, at 444 *et seq.*, there is stated the criteria to be applied in determining the constitutional validity of "emergency" legislation. They are, (1) An emergency must exist, (2) the legislation must be for the protection of a basic interest of society, (3) the relief granted must be of a character appropriate to the emergency and can be granted only upon reasonable conditions, (4) the conditions in the particular case must be reasonable, and (5) the legislation must be temporary. The reasonableness of the Minnesota mortgage moratorium statute involved was discussed as follows, page 445:

> "As already noted, the integrity of the mortgage indebtedness is not impaired; interest continues to run; the validity of the sale and the right of a mortgagee-purchaser to title or to obtain a deficiency judgment, if the mortgagor fails to redeem within the extended period, are maintained; and the conditions of redemption, if redemption there be, stand as they were under the prior law. The mortgagor

during the extended period is not ousted from possession but he must pay the rental value of the premises as ascertained in judicial proceedings and this amount is applied to the carrying of the property and to interest upon the indebtedness. The mortgagee purchaser during the time that he cannot obtain possession thus is not left without compensation for the withholding of possession. Also important is the fact that mortgagees, as is shown by official reports of which we may take notice, are predominantly corporations, such as insurance companies, banks, and investment and mortgage companies. These, and such individual mortgagees as are small investors, are not seeking homes or the opportunity to engage in farming. Their chief concern is the reasonable protection of their investment security. It does not matter that there are, or may be individual cases of another aspect. The legislature was entitled to deal with the general or typical situation. The relief afforded by the statute has regard to the interest of mortgagees as well as to the interest of mortgagors. The legislation seeks to prevent the impending ruin of both by a considerate measure of relief."

Practically everything said in the foregoing quotation is untrue concerning the present cases. The integrity of the contract debt of the West New York Board to the appellants is impaired. Where Mr. Phelps, for example, received $3,200 for the school year 1932-1933, he received only $2,784 the following year (R. 4). He gets no interest on the balance and he is not to get the balance at a later date. And apparently the same sort of thing will go on indefinitely for Chapter 12 of the Laws of 1933 has already been renewed three times. P. L. 1933, Chapter

449; P. L. 1935, Chapter 6; P. L. 1936, Chapter 27. The action here complained of is not like postponing the remedy of the holder of a mortgage with ample compensation in the form of interest or rent during the postponement. To use the same terms, it is like a legislative assertion that the holder of the mortgage must immediately accept in full satisfaction a certain percentage of the mortgage debt with no effort whatever made to compensate for the sacrifice and with no effort whatever made to provide for full payment in the future.

In addition, it is significant that the various renewals of the statute to July 1, 1937, *supra*, omit the recital that an emergency exists. Another objection to the "emergency" theory arises out of the fact that the West New York Board of Education, in its resolutions (R. 18, 19), was entirely silent concerning the existence of any emergency in the West New York school district. Also, the declaration of emergency is in the preamble, not the body of the statute. This deprives the declaration of efficacy. *Yazoo R. R. Co.* v. *Thomas*, 132 U. S. 174.

For all of these reasons we submit that the contracts of the appellants are not subject to any reserved power, either on an "emergency" theory or otherwise, to reduce salaries.

C. Chapter 12 of the New Jersey Laws of 1933 is repugnant to Article 1, Section 10, of the Constitution of the United States, in that it impairs the obligations of existing contracts of the appellants.

This conclusion follows from the reasons given and authorities cited under Points A and B, above. There can be no question but that legislation authorizing the compulsory

reduction of the salary provided for by an employment contract impairs the obligation of that contract.

D. Chapter 12 of the New Jersey Laws of 1933 deprives the appellants of property without due process of law and denies to the appellants the equal protection of the laws.

Contractual rights are recognized as property. *Long Island Water Supply Co.* v. *Brooklyn*, 166 U. S. 685. From the arguments advanced under Points A and B, above, it follows that the appellants have been denied due process of law. By legislative act (Chapter 12 of the Laws of 1933) a portion of a most important element of their contracts, namely, their right to compensation, has been taken from them.

The question of equal protection is similarily important. The action taken denies to the appellants the equal protection of the law, for it takes from them, as creditors of the school district, a part of their contract rights, while other creditors are not so affected. By the terms of the statute, one class, school employees, are made to suffer. Within the group of the appellants serious inequalities have arisen in applying the statute, as is shown by the table appearing at page 55 of the record. Inequalities within the entire faculty is shown by the tables at pages 7-16 of the record.

E. That the appellants in case No. 455 have taken payments at the reduced rate is not important.

This point was not touched upon by the courts below, but has been mentioned in the previous arguments and will perhaps be mentioned here. We contend that it has no

merit. *St. Louis etc. Ry.* v. *U. S.*, 268 U. S. 169, 175; *Kehn* v. *N. Y.*, 93 N. Y. 291; *Clark* v. *State*, 142 N. Y. 101; *Amsler* v. *McClure*, 238 Pa. 409, 413. These appellants have not agreed to the reduction (R. 61).

Conclusion.

It is, therefore, respectfully submitted that the judgments of the New Jersey Court of Errors and Appeals, which are under review in these two cases, should be reversed.

Ward J. Herbert,
Robert H. McCarter,
Counsel for Appellants.

Appendix A.

Chapter 243 of the New Jersey Laws of 1909, (P. L. 1909, p. 398; 4 N. J. Comp. St. pp. 4763 and 4764, Secs. 106a, 106b and 106c).

A Supplement to an act entitled "An act to establish a thorough and efficient system of free public schools and to provide for the maintenance, management and support thereof," approved October nineteenth, one thousand nine hundred and three.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The service of all teachers, principals, supervising principals of the public schools in any school district of this State shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive years in that district, unless a shorter period is fixed by the employing board; PROVIDED, that the time any teacher, principal, supervising principal has taught in the district in which he or she is employed at the time this act shall go into effect, shall be counted in determining such period of employment. No principal or teacher shall be dismissed or subjected to reduction of salary in said school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause, and after a written charge of the cause or causes shall have been preferred against him or her, signed by the person or persons making the same, and filed with the secretary or clerk of the Board of Education having charge of the school in which the service is being rendered, and after the charge shall have been examined into and found true in fact by said Board of Education, upon reasonable notice to the person charged, who may be represented by counsel at the hearing. Charges may be filed by any person, whether a member of said school board or not.

2. Said Board of Education shall have power to issue writs of subpoena on behalf of either party to compel attendance of witnesses to testify before said board in the matter under investigation, which subpoena shall be issued under the seal of said board and be signed by the secretary or clerk thereof, and shall be served in the same manner as subpoenas issued out of the Courts of Common Pleas of this State, and every person who refuses or neglects to obey the command of such a writ, or, who, after appearing, refuses to be sworn and testify, shall in either event be liable to a penalty of fifty dollars, to be sued for in the name of said board in any court of competent jurisdiction, which penalty when collected shall be paid to the treasurer or custodian of moneys of said board. Any member of said board is hereby authorized to administer oaths to such witnesses as may appear or be brought before it, and any person who shall have been so sworn and who shall testify falsely, shall be guilty of perjury.

3. Nothing herein contained shall be held to limit the right of any school board to reduce the number of principals or teachers employed in any school district when such reduction shall be due to a natural diminution of the number of pupils in said school district; AND, PROVIDED FURTHER, that the service of any principal or teacher may be terminated without charge or trial who is not the holder of a proper teacher's certificate in full force and effect.

4. This act shall take effect September first, one thousand nine hundred and nine.

Approved April 21, 1909.

Appendix B.

Chapter 12 of the New Jersey Laws of 1933, (P. L. 1933, p. 24).

AN ACT respecting the salaries or compensation of officers and employees of and persons holding positions in the several school districts of this State.

WHEREAS, due to present economic conditions, an emergency exists which requires that the board of education of every school district in this State be enabled to fix and determine, by resolution, the amount of salary or compensation, to be paid to officers and employees of and persons holding positions in any such school district; therefore,

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The board of education of every school district in this State shall have full authority, by resolution, to fix and determine the salaries and compensation to be paid to officers and employees of and persons holding positions in any such school district, between the first day of July, one thousand nine hundred and thirty-three, and the first day of July, one thousand nine hundred and thirty-four, notwithstanding any such person be under tenure or not; PROVIDED, HOWEVER, that no salary or compensation of any officer or employee of or person holding a position in any school district shall be increased between the first day of July, one thousand nine hundred and thirty-three, and the first day of July, one thousand nine hundred and thirty-four; AND PROVIDED, FURTHER, that if any such person be a member of the Teachers' Pension and Annuity Fund of the State of New Jersey, or any employees' pension fund, such person may continue to pay, or cause to be paid, into

such pension fund the same amount as if such salary or compensation had not been changed, and upon the death or retirement of such member, he or his beneficiary shall be entitled to the same benefits as if his salary or compensation had not been changed; and PROVIDED, FURTHER, that in fixing salaries or compensation there shall be no discrimination among or between individuals in the same class of service; PROVIDED, HOWEVER, that the existing minimum salary of teachers of seventy dollars per month shall not be changed.

2. Nothing in this act contained shall be construed to affect or impair the continuity of position or employment under any tenure of office statute.

3. This act shall take effect immediately.

Approved February 4, 1933.

Appendix C.

Section 106 of the New Jersey School Law, (P. L. 1903 [2d Spec. Sess.] p. 42; 4 N. J. Comp. St., p. 4762).

106. A board of education may make rules and regulations governing the engagement and employment of teachers and principals, the terms and tenure of such employment, and the promotion and dismissal of such teachers and principals, the salaries, and the time and mode of payment thereof, and may from time to time change, amend or repeal such rules and regulations. The employment of any teacher by such board, and the rights and duties of such teacher with respect to such employment, shall be dependent upon and shall be governed by the rules and regulations in force with reference thereto. If a board of education shall not have made rules and regulations as aforesaid, then no contract between such board of education and a teacher shall be valid unless the same be in writing, or partly written and partly printed, in triplicate, signed by the president and district clerk or secretary of the board of education and by the teacher. One copy thereof shall be filed with the board of education, one copy with the teacher and one copy with the county or city superintendent. Such contract shall specify the date when such teacher shall begin teaching, the kind and grade of certificate held by said teacher and the date when said certificate will expire, the salary, and such other matter as may be necessary to a full and complete understanding of the same. In every such contract, unless otherwise specified, a month shall be construed and taken to be twenty school days or four weeks of five school days each. The salary specified in every such contract shall be paid in equal monthly installments, not later than five days after the close of each month while the school shall be in session. Any contract or engagement between a board of education

and a teacher shall cease and determine and be of no effect against said board whenever said board shall ascertain by notice in writing received from the county or city superintendent or otherwise, that said teacher is not in possession of a proper teacher's certificate in full force and effect, notwithstanding the term or engagement for which such contract shall have been made may not then have expired. The State Superintendent of Public Instruction shall prepare and distribute blanks for contracts between boards of education and teachers.